

**OPINION
55-26**

November 30, 1955 (OPINION)

CITIES

RE: Employees - Liability of City for Torts of Firemen

We have received your letter of November 22, 1955, requesting an opinion in regard to the above matter.

Generally speaking, in the absence of a statute creating liability, a municipality is not liable for the torts of its agents while engaged in any governmental function of such municipality. Since the operation and maintenance of a fire department is a governmental duty or function, no legal liability attaches to a city by reason of torts of firemen while engaged in the performance of their duties. A fireman might, of course, be liable in his individual capacity for negligent acts committed by him while engaged in his duties if such negligent acts result in injury to the person or property of another.

The modern trend seems to be for a municipality to carry liability insurance for its employees. This would seem logical and fair in view of the fact that in most of the small towns and cities firemen work for little or nothing and are exposed to certain dangers by virtue of their work, and are entitled to protection against suits involving them in their individual capacities arising out of their work as firemen.

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